

entities because all eligible applicants, large and small, applied for the same set of frequencies in the same markets. Large well-heeled companies will simply be able to outbid smaller entities.

35. North American Group agrees with the small businesses that filed initial Comments that, absent a set-aside or bidding preferences, lotteries should be used to award licenses for unserved areas. First and foremost, as recited in the Comments of John G. Andrikopoulos, et al., the legislative history of the Act makes clear that Congress intended lotteries to be used for applications filed prior to July 26, 1993, ^{28/} and the auction procedures, when finally developed, should not be applied retroactively. ^{29/} In addition, as the Small RSA Operators argue, there is nothing to be gained by switching to an auction process with respect to cellular unserved area applications, and any financial benefit for the government that might arguably accrue will be more than offset by the costs associated with the administrative nightmare that would be created.^{30/}

^{28/} See Andrikopoulos Comments at pp. 4-7.

^{29/} Id. at pp. 8-15.

^{30/} Southwestern Bell, BellSouth Corporation and its subsidiaries, and Bell Atlantic, each a large, multifaceted telecommunications corporation, all support the use of auctions to select licensees to serve cellular unserved areas. Small businesses and individuals, such as Andrikopoulos, and consortia such as the Small RSA Operators and The Quick Call Group, all support the use of lotteries to issue cellular unserved area licenses. The commenters all discuss the legal issues that surround whether the Commission can change its course in mid-stream and retroactively apply the auction procedure to applications that are already on file. However, when boiled down to the simple equities, the big companies want auctions because they are

36. In establishing the application procedure for the issuance of cellular fill-in licenses, the Commission adopted safeguards that were designed to reduce the ability of speculators to participate in these lotteries. For example, there is a twelve month build-out requirement and a prohibition against transfers or assignments of a license until one year after the system is in operation. ^{31/} Judging by the number of applications filed, it appears that these safeguards have had the desired effect. ^{32/}

37. Another concern is that changing the process in mid-stream could result in litigation that will either hold up the auction process even after cellular unserved area auction rules are promulgated by the FCC or, if the auctions are held despite litigation, result in the licenses selling for less than market value because of the uncertainty of unresolved litigation.^{33/} Clearly, the public interest and the intent of Congress will be served only if the Commission uses lotteries to issue cellular unserved area licenses.

B. IVDS Applications

38. The Act added a new Section 309(j)(2) to the Communications Act of 1934 which describes under what circumstances

confident they will be able to outbid any small companies, while the small businesses are certain that without a lottery, they will be unable to compete for cellular unserved area licenses.

^{31/} See Small RSA Operators Comments at pp. 5-6.

^{32/} Id. at pp. 6-7.

^{33/} Id. at 7-8.

competitive bidding should be used to issue licenses for particular services. One of the requirements is that "the principal use of the spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers" (emphasis added). With respect to IVDS, the Commission has tentatively concluded that the service will be subscriber based and thus licenses should be awarded by auction. See NPRM ¶ 143. However, the Commission offers no evidentiary support for this conclusion in the NPRM. North American Group believes there is no such evidence, as the FCC's tentative conclusion is based on a faulty assumption.

39. To receive IVDS service, a customer need only to go to any electronics store and purchase the necessary equipment, much in the manner a consumer purchases a VCR. There will be no equipment rental fee, which could arguably be equated to a subscription fee. The "services" offered will be provided by different vendors, who will charge the customer on a per-use basis, so that the fees will be transactional as opposed to subscription, and under a likely scenario, the payment to the licensee will come from service providers as opposed to customers.^{34/} Thus, IVDS is not a traditional "subscription" service as contemplated by the Act, which makes the use of a lottery system for the issuance of IVDS licenses entirely appropriate.

40. Radio Telecomm and Technology, Inc. ("RTT"), a pioneer of

^{34/} Independent Cellular Consultants ("CC") also opposes auction of IVDS licenses and suggests, as North American Group does, that services can be offered on a non-subscriber basis. See ICC Comments at p.2.

IVDS technology, would rather see auctions used to distribute IVDS licenses. However, its reasons are purely economic and advance its pecuniary interest in having only deep-pocketed licensees to purchase its equipment. RTT believes that auctions will "award licenses to parties who are most likely to have the ability and resources to develop IVDS systems." RTT Comments at p. 1-2. RTT's position does not discuss any safeguards for designated entities, instead merely promoting the idea that only the most financially able should be able to "play."

41. The Richard L. Vega Group ("RLV"), which is a group of telecommunications engineers and consultants, comes closer to the mark, stating that in light of competition in the interactive video market, the success of IVDS licensees will rest on providing the service to subscribers at no charge. See RLV Comments at pp. 11-12 IVDS licensees will, as North American Group suggests, have to rely on payments per transaction. Another factor the Commission should consider, as RLV notes in its Comments, is that IVDS can, at best "...provide only an overlay for existing video/data material." Id. at p. 12. The natural allies of IVDS (broadcast television and other mass media services) have been specifically excluded from auctions. North American Group believes IVDS should be treated more like a "broadcast auxiliary service" and, presumed to be a non-subscriber based service for purposes of the Act.

42. Since there are no working models in place, any conclusion as to whether or not IVDS will be a subscriber-based service is grounded more on speculation than fact. Rather than rush

to a premature (and possibly incorrect) conclusion, at the very minimum, North American Group proposes a "wait and see" option.

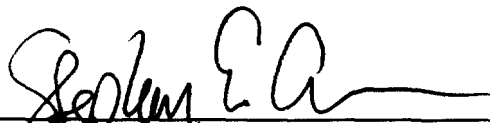
IX. CONCLUSION

43. As a small business committed to being an integral part of the communications industry for years to come, North American Group strongly endorses those proposals that are designed to encourage and promote entrepreneurial participation in the Commission's auction processes. Its Reply Comments herein represent a plan to assist and encourage meaningful participation by qualified entities without creating an environment conducive to speculators and without creating loopholes that would permit big companies to masquerade as small businesses. Adoption of the rules advocated in these Reply Comments will help ensure that important Congressional objectives will be served.

Respectfully submitted,

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